

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:
**Dwight W. Duwa & Duwa's Auction
Service LLC**

ADMINISTRATIVE CONSENT ORDER

NO. 2011-AQ- **28**
NO 2011-SW- **31**

Washington County, Iowa

TO: Dwight W Duwa
Duwa's Auction Service LLC
1365 Hwy 22 W
Wellman, IA 52356

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department), Duwa's Auction Service LLC and Dwight W. Duwa (collectively referred to as Mr. Duwa) for the purpose of resolving air quality and solid waste disposal violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Jim Kacer, Environmental Specialist
Field Office 6
1023 W Madison,
Washington, Iowa 52353
Phone: 319/653-2135

Relating to legal requirements:

Carrie Schoenebaum, Attorney for the DNR
Iowa Department of Natural Resources
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which

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authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, the Department has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Dwight W. Duwa is the deed holder to property located in Washington County at Section 22 T 77N R09W, which is locally known as 1365 WE HWY 22 Wellman, Iowa. At this location Mr. Duwa, along with Junell Duwa, owns and operates a business known as Duwa's Auction Service LLC.

2. On July 22, 2010, a complaint was received by the Department alleging Duwa's Auction Service LLC had engaged in open burning on the southeast corner of its property. The complainant alleged that the business burns waste occasionally around 6:30 in the morning.

3. On August 18, 2010, Jim Kacer, an Environmental Specialist with the Department, went to the above referenced property to conduct a complaint investigation. Once on site he entered the office of Duwa's Auction Service LLC where he spoke with Junell Duwa. She stated that they occasionally burn cardboard and furniture remnants. She said that Mr. Kacer could look around the property. Mr. Kacer observed a large pile of solid waste located near the southeast corner of the property and evidence of open burning on the pile. In the burn pile Mr. Kacer observed ashes, charred wood and partially burned solid waste. Material in the pile included a bicycle, metal from furniture, lawn mowers and lawn mower tires, aerosol cans, suspect asbestos containing material (ceiling tile), partially burned Styrofoam and other solid waste. Mr. Kacer took photos of the solid waste and burn pile.

Next Mr. Kacer returned to the office and at that time Mr. Duwa was present. Mr. Duwa explained that he burns materials from his auction business that does not sell. He primarily burns leftovers from household auctions. Mr. Kacer gave Mr. Duwa a copy of the open dumping and open burning regulations and provided a brief explanation of the regulations. Mr. Kacer told Mr. Duwa that he could not dispose of this waste on his property and that he could not burn trade waste. Mr. Duwa indicated that he would comply with the law and in the future he will take the material to the SEMCO landfill.

4. On August 27, 2010, Mr. Duwa was sent a Notice of Violation (NOV) for the above discussed violations. This NOV summarized the relevant law and stated that the matter was being referred to the Department's Legal Services Bureau for enforcement.

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IV. CONCLUSIONS OF LAW

1 Iowa Code section 455B 133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2 567 IAC 23 2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23 2(2) (variances) and 23 2(3) (exemptions). Mr. Duwa allowed the burning of various solid wastes, including tires. The above stated facts demonstrate noncompliance with this provision.

3 Iowa Code section 455B 304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

4 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Mr. Duwa agrees to do the following:

1 Within 45 days of the date the Director signs this order submit landfill receipts verifying proper disposal of the solid waste to the Department's Field Office 6 at the address listed above; and

2 Within 30 days of the date the Director signs this order, Mr. Duwa shall pay a penalty in the amount of \$3,100.00 to the Department.

VI. PENALTY

Iowa Code section 455B 146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B 307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B 109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the Department has determined

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that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$3,100.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the Department consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." The SEMCO landfill charges \$55.00 a ton to dispose of general waste, additional fees are charged for asbestos containing waste. The open burning at this site has been ongoing for at least 10 years. It is estimated that at least \$600.00 has been saved by not properly disposing of the waste. Therefore, that amount is assessed for this factor.

Gravity of the Violation - Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and poses a risk to human health and the environment. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Therefore, \$1,500.00 is assessed for this factor.

Culpability - Mr. Duwa has a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that his conduct is subject to the Department's rules. The open burning and solid waste disposal regulations have been in place for more than 20 years and Mr. Duwa indicated to the Department that he was aware he was violating the law. Based on the above considerations, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

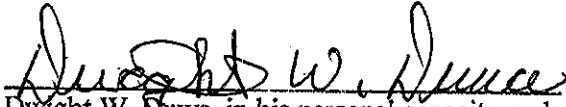
This administrative consent order is entered into knowingly and with the consent of Mr. Duwa. For that reason, Mr. Duwa waives his rights to appeal this order or any part thereof.

VIII. NONCOMPLIANCE


Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the

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Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B 146 and 455B 307.


Dwight W. Duwa, in his personal capacity and on behalf of
Duwa's Auction Service LLC

Dated this 14th day of
Nov, 2011


Roger L. Lande, Director
Iowa Department of Natural Resources

Dated this 18th day of
November, 2011.

Carrie Schoenebaum; DNR Field Office 6; EPA; VIC and VILC 1.